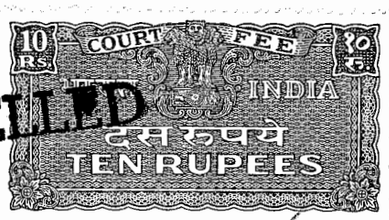
CANCELLED



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(3)

IN THE HIGH COURT OF JUDICATURE CHHATTISGARH AT BILASPUR

W.P NO 1379/2003

PETITIONER: Secretary, Krishi Upaj Mandi Samiti, Khairagarh, Through Yogesh Agrawl, S/o SS Agrawal, aged about 43 years, Its Secretary Principal Executive Officer.

:VERSUS:

RESPONDENTS:

1. Presiding Officer, Labour Court (Under I.D Act) Rajnandgaon, Chhattisgarh

2. President Krishi Upaj Mandi Karmachari Sangh Branch Khairagarh, Rajnandgaon

3. Deputy Secretary, M.P State Krishi Vipnan Board (Now C G State Krishi Vipnan Board) Near Prabhat Talkies, Raipur

4. Bharsadhak Officer, Krishi Upaj Mandi Samiti, Khairgarh Rajnandgaon

5. Ramkrishan Sinha, S/o Purushottam Lal Sinha aged about 32 years R/o Amlipara Khairgarh Distt. Rajnandgaon

6. Komalendra Singh S/o Matak Singh aged 41 years R/o Baret Para Khairagarh, Rajnandgaon Chhattisgarh

P.R. No. 12/2003
Presented by Shri Sharad Gupte
dated 26/04/03

PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA

HIGH COURT OF CHHATTISGARH AT BILASPUR

SINGLE BENCH : HON'BLE SHRI SATISH K. AGNIHOTRI, J.

WRIT PETITION NO.1404 OF 2003

Petitioner	:	Secretary, Krishi Upaj Mandi Samiti, Khairagarh
	versus	
Respondents	:	Presiding Officer, Labour Court (Under I.D. Act), Rajnandgaon and others

WRIT PETITION NO.1403 OF 2003

Petitioner	:	Secretary, Krishi Upaj Mandi Samiti, Khairagarh
	versus	
Respondents	:	Presiding Officer, Labour Court (Under I.D. Act), Rajnandgaon and others

WRIT PETITION NO.1379 OF 2003

Petitioner	:	Secretary, Krishi Upaj Mandi Samiti, Khairagarh
	versus	
Respondents	:	Presiding Officer, Labour Court (Under I.D. Act), Rajnandgaon and others

(119)

WRIT PETITION NO.1402 OF 2003

Petitioner	:	Secretary, Krishi Upaj Mandi Samiti, Khairagarh
	versus	
Respondents	:	Presiding Officer, Labour Court (Under I.D. Act), Rajnandgaon and others

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Present : Mr. Rajnish Singh Baghel, counsel for the petitioner.
Mr. Manindra Shrivastava, Senior Advocate with Mr. Amit Verma, counsel for respondent No.2.
Mr. Sameer Behar, counsel for respondent No.3.
Mr. Parag Kotecha, counsel for the caveator.

ORAL ORDER
(Passed on 27th of July, 2006)

The present writ petitions, being Writ Petitions No.1404/2003, 1403/2003, 1379/2003 and 1402/2003, involve common question of law as to whether the impugned awards dated 24-2-2003 passed in Cases No.236/I.D.Act/97, 235/I.D.Act/Reference/97, 237/I.D.Act/97/Reference and 233/I.D.Act/Reference/97 respectively by the Labour Court suffer from patent illegality. Thus, these petitions are being disposed of by this common order.

2. In Writ Petition No.1404/2003, respondents No.5 and 6 were appointed in the year 1991 as L.D.C. In Writ Petition No.1403/2003, respondents No.5, 6 and 7 were appointed as Assistant Sub-Inspectors on 8-

(12)

5-1992, 5-8-1991 and 2-12-1991 respectively. In Writ Petition No.1379/2003, respondents No.5 and 6 were appointed on the posts of Peon in the year 1991 and in Writ Petition No.1402/2003, respondent No.5 was appointed as Assistant Sub-Inspector on 5-8-1991. The question of law involved herein is whether the above stated private respondents, who are continuing on the posts of Peon/L.D.C./Assistant Sub-Inspector for more than 6 months, are entitled to be classified as permanent under the Standard Standing Orders annexure to the M.P./C.G. Industrial Employment (Standing Orders) Rules, 1963 (henceforth 'the Rules, 1963').

3. Learned counsel for the petitioner impugns the awards on the common grounds, firstly that the private respondents had approached High Court of Judicature at Jabalpur seeking for the same relief of regularization by way of filing writ petitions, being Writ Petition No.503/2000 and Writ Petition No.883/1994. The High Court of Judicature at Jabalpur disposed of the writ petitions with a direction to make representations. The petitioner has not produced a copy of the order passed by the High Court of Judicature at Jabalpur, whereby representations were directed to be made to the authorities. It is not known as to whether cases were decided on merit or disposed of with a direction. Learned counsel for the petitioner relies on decision of the Supreme Court in **Pondicherry Khadi & Village Industries Board vs. P. Kulothangan and another, reported in (2004) 1 SCC 68** in support of his contention that the principle of *res judicata* operates in industrial disputes also. In the cases on hand, there is no question of

applying principle of *res judicata* to the facts of the cases. The petitioner has not produced any material to prove that the present disputes have been dealt with in the earlier proceedings before the High Court of Judicature at Jabalpur in any of the writ petitions as stated above. Admitted case of both the parties is that the High Court of Judicature at Jabalpur has disposed of the petitions with a direction to make representations before the authorities. If the cases were not decided on merit and the same were disposed of with a direction to make representations, principle of *res judicata* will not be applicable. Contention of learned counsel for the petitioner is bereft of relevant materials. That does not amount to disposal of the disputes on merits, which create *res judicata* in the present disputes. The petitioner has failed to produce any material in support of above contention and as such the same deserves to be rejected.

4. The second challenge to the impugned awards is that the provisions of the M.P./C.G. Industrial Employment (Standing Orders) Act, 1961 (henceforth 'the Act, 1961') are not applicable. Section 2 of the Act, 1961 provides for application of the Act, as quoted below :-

> **S. 2** : "**Application of the Act.** – (1) This Act shall apply to –
>
> (a) every undertaking wherein the number of employees on any day during the twelve months preceding or on the day this Act comes into force or on any day thereafter was or is more than twenty; and
>
> (b) such other class or classes of undertaking as the State Government may, from time to time, by notification, specify in this behalf :

322

> Provided that it shall not apply to an undertaking carried on by or under the authority of the Central Government or railway administration or a mine or an oilfield.
>
> (2) Nothing in this Act shall apply to the employees in an undertaking to whom the Fundamental and Supplementary Rules, Civil Services (Classification, Control and Appeal) Rules, Civil Services (Temporary Service) Rules, Revised Leave Rules, Civil Services Regulations or any other rules or regulations that may be notified in this behalf by the State Government in the Official Gazette apply."

5. The petitioner has not produced any document or any material to show that the provisions of the Act, 1961 are not applicable. The Labour Court, after having considered contention of both the parties, has come to the categorical conclusion that the provisions of the Act, 1961 and the Standard Standing Orders under the Rules, 1963 are applicable to the case. The petitioner Krishi Upaj Mandi Samiti, Khairagarh admittedly is not performing a sovereign function of the State Government. Function of the Mandi Samiti is commercial and profit oriented. It is settled position of law that an undertaking/department involved in commercial activities with profit orientation cannot be held that the same is performing sovereign function of the State Government and is not an industry. Learned counsel for the petitioner has not produced any material which goes to show that the petitioner was involved in sovereign function of the State Government not in commercial activities. Thus, the provisions of Industrial Laws are applicable to the disputes involved in the present cases.

6. Thirdly, the private respondents were not appointed in accordance with rules and bylaws as framed under the M.P./C.G. Krishi Upaj Mandi Adhiniyam, 1972. Learned counsel for the petitioner further relies on decision of the Supreme Court in **Range Forest Officer vs. S.T. Hadimani, reported in (2002) 3 SCC 25** to the effect that the burden to prove that the private respondents – employees have worked for more than 6 months is on the private respondents – employees and no inference can be drawn on the basis of mere statement made by the employees/applicants.

7. It was further contended that in view of decision of the Supreme Court in **Secretary, State of Karnataka and others vs. Umadevi (3) and others, reported in (2006) 4 SCC 1,** the appointment of the private respondents – employees were made not in accordance with law, as such they have no right to be either regularised or to be declared as permanent.

8. Mr. Manindra Shrivastava, learned Senior Advocate with Mr. Amit Verma, learned counsel, appearing for the private respondents, on the contrary submits that there is no infirmity or illegality in the impugned awards. The Labour Court has considered facts of the cases and has come to the categorical conclusion that the provisions of the Act, 1961 and the Standard Standing Orders under the Rules, 1963 are applicable to the case. With regard to applicability of the Rules, 1963, learned counsel submits that since the present dispute is governed under the provisions of Industrial Laws, the Rules, 1963 are applicable, as the Industrial Laws are beneficial piece of legislation.

124

9. I have heard learned counsel for the parties and have gone through the records appended to the petition as well as the return. It is evident that the Labour Court has recorded its finding clearly after considering contentions of the parties that the provisions of the Act, 1961 and Standard Standing Orders under the Rules, 1963 are applicable to the dispute in question. Clause 2 of the Standard Standing Orders provides for classification of the employees who have completed 6 months satisfactory service in a clear vacancy. In the instant case, all the private respondents, according to deposition of the employer, Secretary, Krishi Upaj Mandi Samiti, Khairagarh, have completed regular service for more than 6 years and the private respondents are working against the vacant posts satisfactorily. Relying on the deposition of the Secretary, Krishi Upaj Mandi Samiti, Khairagarh, which stands unrebutted, the Labour Court has come to the conclusion that the requirement of the Clause 2(i) of the Standard Standing Orders for classifying the private respondents as permanent are satisfied. The Labour Court has not only recorded finding of working of the private respondents – employees for more than 6 years on the basis of self same statement of the employees without support of any document, but also on the basis of deposition of the Secretary, Krishi Upaj Mandi Samiti, Khairagarh that the private respondents – employees have worked for more than 6 years. The requirement to attract provisions of Clause 2 of the Standard Standing Orders is 6 months satisfactory service in a clear vacancy to classify the employee as permanent employee. In the present cases, the

above requirement is clearly satisfied on the basis of deposition of the Secretary, Krishi Upaj Mandi Samiti, Khairagarh.

10. Reliance of learned counsel for the petitioner in the case of **Secretary, State of Karnataka and others vs. Umadevi (3) and others (Supra)** is not applicable to the facts of the present cases. In the present cases, the private respondents were neither removed nor discontinued from services. The question of their appointment was not in question and their classification as permanent is in accordance with the provisions of law, i.e., Clause 2 of the Standard Standing Orders. Hence, it cannot be held that the impugned awards passed by the Labour Court are not as per Constitutional scheme or not in accordance with law, and suffer from any illegality, perversity.

11. For the aforesaid reasons, there is no illegality, infirmity or irregularity found in the awards impugned herein, which warrant interference by this Court in exercise of its jurisdiction under Article 227 of the Constitution of India. Accordingly, all the writ petitions are dismissed. No order as to costs.

12. A copy of this order be placed in the record of the three connected writ petitions.

Sd/-
Satish K. Agnihotri
Judge

Gopal